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EXAMINER

BLAKE, CAROLYN T

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

10/775,372

Applicant(s)

HARTLEY, WAYNE

Examiner

Carolyn T. Blake

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Species IV in the reply filed on September 19, 2005 is acknowledged. The traversal is on the ground(s) that the restriction is improper because all claims read on the elected species. This is not found persuasive because for a proper traversal, Applicant is required to submit evidence or admit on the record that the species are obvious variants of each other. Applicant has not done this.

In addition, although Examiner agrees all claims read on the elected species, this is not the case for all species. For example, claim 8 only reads on the elected species.

The requirement is still deemed proper and is therefore made FINAL.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "16" has been used to designate both a pin/screw (FIG 3A) and a latch (FIG 3B).

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 19.

4. The drawings are objected to because "FIG 3" should be renumbered - FIG 3A-  
-

5. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate

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prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

6. The disclosure is objected to because of the following informalities: Numerous times throughout the disclosure, Applicant refers to an "upper" member without referring to a "lower" member or visa versa. For example, an "upper" blade is disclosed without a "lower" blade, and a "lower" tray without an "upper" tray. This inconsistency creates confusion.

Appropriate correction is required.

### ***Claim Objections***

7. Claim 5 is objected to because of the following informalities: "to upper jaw" (line 2) should be changed to - -to said upper jaw- -. Appropriate correction is required.

8. Claim 10 is objected to because of the following informalities:

- The phrase "a second flat" (line 2) should be changed to - -a second flat side- -.
- It is unclear which slot (line 2) is reference in claim 10 since two slots are claimed in claim 9.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites the limitation "said a front portion" in line 1. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1-10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Idema (4,809,431).

Regarding claim 1, Idema discloses nail clippers comprising:

- a. a lower tray (66) having a first side dam (70) extending upwardly from a first side of said lower tray (12), and having a second side dam (70) that

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extends upwardly from a second side of said lower tray (66) that is opposite said first side of said lower tray (66); and

- b. an upper jaw (14) comprising a blade (54) that is displaced toward said lower tray (66), wherein said blade (54) travels between said first side dam (70) and said second side dam (70) to contact said lower tray (66).

Regarding claim 2, Idema discloses said blade (54) is generally perpendicular to said lower tray (66) when said upper blade (54) contacts said lower tray. Note FIG 4 wherein the blade is generally perpendicular to several vertical sides of the tray.

Regarding claim 3, Idema discloses a front portion of said lower tray (66) extends beyond the blade (54).

Regarding claim 4, Idema discloses said lower tray (66) has a slot (cavity of 66) therein that receives a cutting edge of said blade (54). Note FIGS 1 and FIG 4, from which it is inherent part of the cutting edge of the blade, in particular a center section, is received by the slot (cavity).

Regarding claim 5, Idema discloses the blade (54) is pivotally mounted to the upper jaw (14). Note the pivot created by rivet 20.

Regarding claim 6, Idema discloses said first side dam (70) and said second side dam (70) each have a guide (crease of wall) formed therein, and wherein said blade (54) traverses each said guide. The crease in the dams (70) can be considered a guide because it guides nail clippings to the bottom on the tray.

Regarding claim 7, Idema discloses said first side dam (70) and said second side dam (70) each have a guide (crease of wall) formed therein, and wherein said blade

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(54) traverses each said guide. The crease in the dams (70) can be considered a guide because it guides nail clippings to the bottom on the tray.

Regarding claim 8, Idema discloses said cutting blade (54) has a concave shape, and wherein said lower tray (66) has a corresponding convex shape that engages said cutting blade.

Regarding claim 9, Idema discloses a pivotal mounting that provides a pivotal relationship between said upper jaw (14) and said lower tray (66), wherein said pivotal mounting comprising an axle (32) that traverses a first slot and a guide pin (20) that traverses a second slot.

Regarding claim 10, Idema discloses said axle (32) has a first flat side that engages said slot and a second flat side that engages said slot.

Regarding claim 12, Idema discloses a front portion of said upper jaw (14) moves rearwardly and down as said blade (54) is displaced toward said lower tray (66).

13. Claims 1, 3-10, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Means (5,392,518).

Regarding claim 1, Means discloses nail clippers comprising:

- a. a lower tray (14) having a first side dam (62) extending upwardly from a first side of said lower tray (12), and having a second side dam (64) that extends upwardly from a second side of said lower tray (14) that is opposite said first side of said lower tray (14); and

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- b. an upper jaw (12) comprising a blade (28) that is displaced toward said lower tray (14), wherein said blade (28) travels between said first side dam (62) and said second side dam (64) to contact said lower tray (14).

Regarding claim 3, Means discloses a front portion of said lower tray (6) extends beyond the blade (28).

Regarding claim 4, Means discloses said lower tray (14) has a slot (cavity formed by side dams) therein that receives a cutting edge of said blade (28).

Regarding claim 5, Means discloses the blade (28) is pivotally mounted to the upper jaw (12). Note the pivot created by fasteners 20 and 22.

Regarding claim 6, Means discloses said first side dam (62) and said second side dam (64) each have a guide (surface of side dams) formed therein, and wherein said blade (28) traverses each said guide. The surface of the side dams (62, 64) can be considered a guide because it guides the blade (28) toward the lower tray (14).

Regarding claim 7, Means discloses said first side dam (62) and said second side dam (64) each have a guide (surface of side dams) formed therein, and wherein said blade (28) traverses each said guide. The surface of the side dams (62, 64) can be considered a guide because it guides the blade (28) toward the lower tray (14).

Regarding claim 8, Means discloses said cutting blade (28) has a concave shape, and wherein said lower tray (14) has a corresponding convex shape that engages said cutting blade. Note the side profile in FIGS 3 and 4.

Regarding claim 9, Means discloses a pivotal mounting that provides a pivotal relationship between said upper jaw (12) and said lower tray (12), wherein said pivotal



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mounting comprising an axle (20) that traverses a first slot and a guide pin (22) that traverses a second slot.

Regarding claim 10, Means discloses said axle (20) has a first flat side that engages said slot and a second flat side that engages said slot. Note FIGS 3 and 4 that show the axle (20) as having flat sides.

Regarding claim 12, Means discloses a front portion of said upper jaw (12) moves rearwardly and down as said blade (28) is displaced toward said lower tray (14).

14. Claims 1-8 and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Sakai (2004/0200073).

Regarding claim 1, Sakai discloses nail clippers comprising:

- a. a lower tray (11) having a first side dam (12) extending upwardly from a first side of said lower tray (12), and having a second side dam (12) that extends upwardly from a second side of said lower tray (11) that is opposite said first side of said lower tray (11); and
- b. an upper jaw (6) comprising a blade (3) that is displaced toward said lower tray (11), wherein said blade (3) travels between said first side dam (12) and said second side dam (12) to contact said lower tray (11).

Regarding claim 2, Sakai discloses said blade (3) is generally perpendicular to said lower tray (11) when said upper blade (3) contacts said lower tray.

Regarding claim 3, Sakai discloses a front portion of said lower tray (6) extends beyond the blade (3).

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Regarding claim 4, Sakai discloses said lower tray (11) has a slot (12a) therein that receives a cutting edge of said blade (3).

Regarding claim 5, Sakai discloses the blade (3) is pivotally mounted to the upper jaw (6). Note the pivot created by pivot pin 42.

Regarding claim 6, Sakai discloses said first side dam (12) and said second side dam (12) each have a guide (12a) formed therein, and wherein said blade (3) traverses each said guide.

Regarding claim 7, Sakai discloses said first side dam (12) and said second side dam (12) each have a guide (12a) formed therein, and wherein said blade (3) traverses each said guide.

Regarding claim 8, Sakai discloses said cutting blade (3) has a concave shape, and wherein said lower tray (11) has a corresponding convex shape (formed by fixed blade 2) that engages said cutting blade (3).

Regarding claim 13, Sakai discloses said blade (3) is positioned generally vertically at all points of travel of said blade (3) as said blade (3) is disposed toward said lower tray (11).

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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16. Claim 11 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Idema.

Idema discloses said first side dam (70) and said second side dam (70) extend outwardly beyond said blade (54) at an angle between 30° to 60° from a longitudinal centerline. See FIG 5.

To the degree it can be argued this is speculative because Idema does not disclose an exact angle, claim 11 is rejected under 35 U.S.C. 103(a). At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to vary the angle of the side dams from 30° to 60° because Applicant has not disclosed that the side dam angle provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the angle shown by Idema because the angle would still create a streamlined design. Therefore, it would have been an obvious matter of design choice to modify Idema to obtain the invention as specified in claim 11.

### ***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Oesterwitz (1,363,164), Jolidon (1,809,556), Ro (5,072,511), Harris (5,722,435), and Lieberman et al (5,983,498) disclose nail clippers.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn T. Blake whose telephone number is (571) 272-

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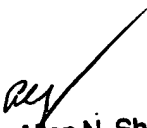
4503. The examiner can normally be reached on Monday to Friday, 8:00 AM to 5:30 PM, alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (571) 272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CB

CB  
September 28, 2005

  
Allan N. Shoap  
Supervisory Patent Examiner  
Group 3700